

Romaine C. Marshall (9654)
Jose A. Abarca (12762)
Jonathan E. Schmalfeld (admitted *pro hac vice*)
POL SINELLI PC
2825 E Cottonwood Pkwy, Suite 500
Salt Lake City, UT 84121
Telephone: (801) 999-3504
rmarshall@polsinelli.com
jabarca@polsinelli.com
jschmalfeld@polsinelli.com

*Attorneys for Relief Defendant
Flaherty Enterprises, LLC*

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, NORTHERN DIVISION**

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

vs.

DIGITAL LICENSING INC. (d/b/a “DEBT
Box”), a Wyoming corporation; JASON R.
ANDERSON, an individual; JACOB S.
ANDERSON, an individual; SCHAD E.
BRANNON, an individual; ROYDON B.
NELSON, an individual; JAMES E.
FRANKLIN, an individual; WESTERN OIL
EXPLORATION COMPANY, INC., a
Nevada corporation; RYAN BOWEN, an
individual; IX GLOBAL, LLC, a Utah limited
liability company; JOSEPH A. MARTINEZ,
an individual; BENJAMIN F. DANIELS, an
individual; MARK W. SCHULER, an
individual; B & B INVESTMENT GROUP,
LLC (d/b/a “CORE 1 CRYPTO”), a Utah
limited liability company; TRAVIS A.
FLAHERTY, an individual; ALTON O.
PARKER, an individual; BW HOLDINGS,
LLC (d/b/a the “FAIR PROJECT”), a Utah

**RELIEF DEFENDANT FLAHERTY
ENTERPRISES, LLC’S RULE 12(b)(6)
MOTION TO DISMISS**

Case No. 2:23-cv-00482-RJS-DBP
Chief Judge Robert J. Shelby
Magistrate Judge Dustin B. Pead

limited liability company; BRENDAN J. STANGIS, an individual; and MATTHEW D. FRITZSCHE, an individual,

Defendants,

ARCHER. DRILLING, LLC, a Wyoming limited liability company; BUSINESS FUNDING SOLUTIONS, LLC, a Utah limited liability company; BLOX LENDING, LLC, a Utah limited liability company; CALMFRITZ HOLDINGS, LLC, a Utah limited liability company; CALMES & CO, INC., a Utah corporation; FLAHERTY ENTERPRISES, LLC, an Arizona limited liability company; IX VENTURES FZCO, a United Arab Emirates company; PURDY OIL, LLC, a Nebraska limited liability company; THE GOLD COLLECTIVE LLC, a Utah limited liability company; and UIU HOLDINGS, LLC, a Delaware limited liability company,

Relief Defendants.

Relief Defendant Flaherty Enterprises, LLC (“Flaherty Enterprises”), pursuant to Federal Rule of Procedure 12(b)(6) and DUCivR 7-1(a)(7), files this Motion to Dismiss Plaintiff’s claims against it as a Relief Defendant. Flaherty Enterprises incorporates by reference all of the arguments raised by Defendants Travis A. Flaherty, IX Global, and Joseph A. Martinez in their Motion to Dismiss dated October 6, 2023. Dkt. #187.

INTRODUCTION AND INCORPORATION OF ARGUMENTS

The sole allegation against Flaherty Enterprises is that it is “an Arizona limited liability company with a principal place of business in Queen Creek, Arizona. Defendant Travis Flaherty is a member and the Registered Agent for the entity. Flaherty Enterprises, LLC received at least \$260,000 in investor funds to which it has no legitimate claim.” Compl. ¶ 36. A summons was issued against Flaherty Enterprises on July 26, 2023 (Dkt. #5) and return of service was filed for Flaherty Enterprises on August 4, 2023 (Dkt. #17).

For the same reasons stated by Defendants Travis A. Flaherty, IX Global, and Joseph A. Martinez in their Motion to Dismiss dated October 6, 2023 (Dkt. #187) the claims against Flaherty Enterprises should be dismissed. Flaherty Enterprises is a Relief Defendant which has not been accused of any wrongdoing but instead merely for alleged ownership interests in property subject to this litigation. Pursuant to DUCivR 7-1(a)(7), Flaherty Enterprises incorporates by reference the entirety of that Motion to Dismiss as if brought by Flaherty Enterprises itself.

ADDITIONAL DEFENSES PRESERVED

In addition to the arguments incorporated by reference above, Flaherty Enterprises specifically asserts and reserves its right to seek dismissal pursuant to Federal Rules of Civil Procedure 12(b)(1) and (2) due to being the legitimate owner of any property in its possession and lacking sufficient contacts with this forum. *See FTC v. LeadClick Media, LLC et al.*, 838 F.3d 158, 177 (2d Cir. 2016) (“relief defendants who have provided some form of valuable consideration in good faith are beyond the reach of the district court’s disgorgement remedy.”); *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 297 (1980) (holding that under the Due Process Clause, a defendant is subject to the jurisdiction of a federal court only when the

defendant's conduct is such that it should "reasonably anticipate being haled into court there."). Both 12(b)(1) and (2) require evidentiary hearings to resolve disputed issues of fact related to the legitimacy of claims over assets at issue and adequacy of jurisdictional connections to this forum. *See Fed. R. Civ. P. 12(d)* (stating that only motions under Rule 12(b)(6) and 12(c) require exclusion of matters outside the pleadings to avoid being converted to a motion for summary judgment). Flaherty Enterprises only anticipates raising such defenses in the event Defendants Travis A. Flaherty, IX Global, and Joseph A. Martinez's Motion to Dismiss is denied in whole or in part.

However, in an excess of caution, and to prevent any allegations of implicit waiver of such defenses, Flaherty Enterprises specifically reserves its right to present such defenses and will fully brief such defenses on an expedited basis should the Court determine that is appropriate due to the unique procedural posture of the instant case.

CONCLUSION

For the foregoing reasons, Relief Defendant Flaherty Enterprises, LLC respectfully requests this Court dismiss this case against it, and for all further relief which this Court deems is just and proper.

Dated: October 13, 2023

POLSINELLI PC

/s/ Jose A. Abarca

Romaine C. Marshall

Jose A. Abarca

Jonathan E. Schmalfeld

Attorneys for Relief Defendant Flaherty Enterprises, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 13th day of October, 2023, the foregoing document was served *via* CM/ECF to all counsel of record.

/s/ Kaitlin Morgan